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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,068	02/20/2002	Karin Maihart		8575

7590 03/09/2005

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EXAMINER

LUONG, SHIAN TINH NHAN

ART UNIT PAPER NUMBER

3728

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

98

Office Action Summary	Application No. 10/080,068	Applicant(s) MAIHART ET AL.	
	Examiner Shian T. Luong	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, applicant has not claimed the combination of the sheath with the container, and yet requires the sheath to be deep enough so that the appendage can enter the container. The depth of the sheath is not determinable when the depth of the container has not been defined.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Evans (Des.258,696) or Sudduth (Des. 328,160). The stretchable liner is capable of covering an inner portion of a container. The liner is waterproof as conventionally known.

4. Claim 1 is finally rejected under 35 U.S.C. 102(b) as being anticipated by Guiste (US 6,085,367). Guiste discloses a disposable waterproof sheath that is deep enough to accommodate a person's appendages. The liner has bath oil and beads.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bleicher (US 5,465,436), Bleicher discloses a disposable water-proof sheath that is deep enough to accommodate a person's appendages. The liner is attached to the inner.

Response to Arguments

6. Applicant's arguments filed on 10/29/04 have been fully considered but they are not persuasive. Applicant argued that neither Evans or Sudduth teaches a liner for a footbath or handbath and therefore does not anticipate the claim. As applicant noted from his/her recitation of the case law, to anticipate a claim, the prior art reference has to disclose every limitation of the claim. The prior art clearly shows a disposable waterproof sheath that can cover an inner portion of a container. The sheath also the structure to grip the edge of the container. For example, the elastic stretchable portion around the opening of the liner. Applicant has only claimed a liner in essence and its functional use. As previously indicated, the intended use language is met when the structure is capable of performing that function. As in this case, the prior art structure performs the function claimed.

With regard to the argument from Guiste, applicant is arguing the functional use of the liner which is inherently met by Guiste. The liner covers the inner surface of the bathtub and hence prevents contamination of disease versus when there is no liner within the bathtub.

Applicant also argued that Bleicher does not teach a liner because the footbaths and handbaths are smaller than a tank that holds a person. But as long as the tank is large enough to hold a person's foot or hand, it is considered a hand or footbath. Accordingly, applicant's argument is not persuasive.

Conclusion

7. Telephone inquiries regarding the status of applications or other general questions, by

Art Unit: 3728


persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL
March 5, 2005


Primary Examiner
Shian Luong
Art Unit 3728